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Washington State Department of Health
Certificate of Need Program
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Via Electronic Mail to fslcon@doh.wa.gov

Dear Program Directors:

This letter requests a Determination of Reviewability ("DOR") by the Department of Health Certificate of Need Program (the "Department"), pursuant to WAC 246-310-050, that a proposed transaction between Oregon Health and Science University ("OHSU") and Legacy Health does not constitute the purchase or sale of an existing hospital or otherwise require certificate of need ("CN") review.

1. The Parties and the Transaction.

Legacy Health is a nonprofit health system providing comprehensive healthcare services across both the Portland, OR/Vancouver, WA metro areas and northern Willamette Valley through hospitals, outpatient clinics, urgent care centers, and a network of community-based providers. Legacy Health is comprised of six hospitals (five of which are located in Oregon) and 70 outpatient clinics.

In the State of Washington, Legacy Health is the sole member of one nonprofit hospital, Legacy Salmon Creek Hospital, located at 2211 NE 139th Street, Vancouver WA ("Salmon Creek Hospital"). Organized under Washington law, and built in 2005, Salmon Creek Hospital is an acute care hospital with 220 licensed beds. Legacy Health is also the corporate parent of Legacy Clinics, LLC (ABN Legacy Medical Group), which delivers professional medical services at Salmon Creek Hospital.¹

OHSU is a public academic health center established under Oregon law (ORS 353) with a Board of Directors appointed by the Governor and confirmed by the Oregon Senate. OHSU's operations are subject to ongoing operational oversight from both the Governor and the Legislature through

¹ In addition to the activity mentioned above, Legacy Health and GoHealth, LLC have a joint venture that operates five urgent care clinics in Washington (and 12 in Oregon). Legacy Health provides all medical staffing for the GoHealth joint venture locations.

mandatory annual reporting obligations. It operates 576 licensed hospital beds and numerous clinics throughout Oregon. Within the State of Washington, OHSU provides healthcare services at: (a) OHSU Child Development Rehabilitation Center in Vancouver, WA; (b) OHSU Casey Eye Institute in Longview, WA; (c) OHSU Casey Eye Institute in Vancouver, WA; and (d) OHSU Doernbecher Specialty Pediatrics Clinic in Vancouver, WA.²

In May 2024, OHSU and Legacy entered into a System Combination Agreement, with a proposed effective date of March 30, 2025 (the “Transaction”). At closing, the Transaction will fully integrate Legacy Health into OHSU’s public university health system in order to improve health outcomes and access to care, and address health inequities. The Transaction will create an integrated public university health system that is more financially stable, while strengthening accountability, local control, and ongoing investments in the workforce and communities.

As a result of the Transaction, OHSU will become the sole member of Legacy Health. As Legacy Health’s sole member, OHSU will control all of Legacy Health’s subsidiaries and joint venture interests, with two exceptions: Legacy Health Foundation and Legacy Health’s 50% member interest in PacificSource.³ At closing, OHSU will become the indirect ultimate parent of Salmon Creek Hospital and Legacy Clinics, LLC.

Following the Transaction, Salmon Creek Hospital will continue to operate as it currently does, in its current location, under the existing hospital license, tax identification number, CMS provider agreement and CMS provider number. There will be no changes to the number of licensed beds and no substantive changes to service lines, staffing, or patient care operations. There are no anticipated construction or other material changes in the physical plant at SCMC.

2. The Transaction Does Not Require a Certificate of Need.

The activities subject to CN review include (i) the establishment of a new hospital, (ii) the sale, purchase or lease of a hospital, and (iii) a change in the bed capacity of a hospital. *See* RCW 70.38.105(4). As the Transaction will not result in any of the items listed in the statute, CN review is not required.

RCW 70.38 provides in part that the “sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025” is subject to CN review. *See* RCW 70.38.105(4)(b). The Transaction does not fit within the plain language of this statutory provision because it does not involve the sale, purchase, or lease of an existing hospital. Although certain regulations were previously adopted to require CN review of transactions resulting in a change of control of a hospital, these regulations were held to be invalid as beyond the Department’s authority. *See Wash. State Hosp. Assoc. v. Wash. State Dep’t of Health*, 183 Wn.2d 590, 597 (2015). In its opinion, the Washington Supreme Court relied in part on a long history of the Department concluding that

² In a Notice of Material Change, filed with the Washington Office of the Attorney General pursuant to RCW 19.390.090, Legacy and OHSU listed the locations where they provide healthcare services in the State of Washington. *See* Exhibit A.

³ For more information regarding the overall transaction or its components, including Legacy Health Foundation and its ownership of PacificSource, please *see* https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/039-OHSU_HCMO-Notice.pdf. With respect to the aforementioned joint venture, *see* fn. 1, Legacy Health will retain this joint venture interest post-closing, with OHSU being the indirect owner of Legacy Health’s joint venture interest.

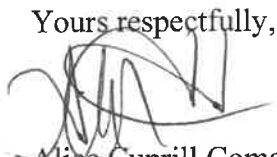
transactions resulting in a change in ownership interests or a change of control were not subject to CN review. *Id.* at 593.

The Department has, on numerous occasions, determined that CN review did not apply under substantially similar circumstances as to those which are presented by this Transaction.⁴ Notably, the Department granted an exception to MultiCare in 2021 involving an acquisition of ownership of Capital Medical Center, without changes to the TIN, or CMS provider agreement or number, and without immediate construction plans. The Department concluded that CN review was not required as that transaction did not fit the definition of a sale, purchase, or lease of a hospital under Washington law (*see* DOR #21-24, a copy of which is attached hereto as Exhibit B).

Also, similar to the transaction involving Capital Medical Center, the Transaction here does not contemplate any change in Salmon Creek Hospital's bed capacity, or material changes to the services provided by the hospital. Additionally, at the closure of the Transaction, there will be no change to Salmon Creek Hospital's existing tax identification number, CMS provider agreement or CMS provider number, and no construction at the hospital is contemplated in the proposed Transaction.

Accordingly, and consistent with the Department's prior determinations, we respectfully submit that the Transaction is not subject to CN review, and OHSU respectfully requests a determination of non-reviewability. Please contact me at 503-495-5222 or cuprillc@ohsu.edu with any questions or requests for additional information. The DOR fee of \$1,925 has been sent with the paper copy of this letter.

Yours respectfully,



Alice Cuprill Comas

Executive Vice President of Institutional Affairs and General Counsel

⁴ Examples of DORs in which the Department found that a change in ownership interest or a change in control transactions were not subject to CN review include: DOR #23-07, exception granted for a transaction involving the corporate merger of Confluence Health and Wenatchee Valley Hospital; DOR 13-24, exception granted for a transaction specifically involving an affiliation agreement between Franciscan Health System and Harrison Medical Center; DOR dated March 12, 2007, exception granted for a transaction in which Franciscan Health System became the sole corporate member of Enumclaw Regional Hospital Association; and DOR #06-34, exception granted for a transaction in which MultiCare became the sole corporate member of Good Samaritan Community Healthcare. *See* Exhibit C.